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7 Attorneys for Defendant
8 Sterling Jewelers Inc.

9
10 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11
12 SHERVIN SHAKOURY,
13 Plaintiff,
14 vs.
15 STERLING JEWELERS INC., a
corporation; and DOES 1-50,
16 inclusive,
17 Defendants.
18
19

CASE NO. 2:19-cv-1341

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C.
SECTION 1441(B) (DIVERSITY)**

(Case removed from Superior Court of
California, County of Orange, Case No.
30-2019-01045446-CU-WT-CJC,
Complaint filed: January 18, 2019)

20
21 TO THE CLERK OF THE ABOVE ENTITLED COURT:

22 PLEASE TAKE NOTICE that defendant Sterling Jewelers Inc.
23 ("Defendant") hereby removes to this Court the state court action entitled *Shervin*
24 *Shakoury, Plaintiff v. Sterling Jewelers Inc., a corporation; and Does 1-50,*
25 *inclusive, Defendants*, case number 30-2019-01045446-CU-WT-CJC, previously
26 pending in the Superior Court of California, Orange County, pursuant to 28 U.S.C.
27 §§1332, 1441, and 1446. As grounds for removal, Defendant states as follows:
28

State Court Action

1. On January 18, 2019, an action was commenced in the Superior Court of the State of California, County of Orange, entitled *Shervin Shakoury, Plaintiff v. Sterling Jewelers Inc., a corporation; and Does 1-50, inclusive, Defendants*, as case number 30-2019-01045446-CU-WT-CJC (the “State Court Action”). A copy of the complaint is attached as Exhibit 1.

2. The date upon which Defendant received a copy of the complaint through service of process was on January 25, 2019, when Defendant's registered agent for service of process, C T Corporation System, was personally served with a copy of the summons and complaint. A copy of the summons is attached as Exhibit 2. This notice of removal is timely filed pursuant to 28 U.S.C. § 1446 (b) in that it is filed within 30 days after receipt by Defendant of a copy of the complaint. Defendant was also served with a Civil Case Cover Sheet, a copy of which is attached as Exhibit 3.

3. On February 20, 2019, Defendant filed an answer. A copy of the answer is attached as Exhibit 4.¹

4. There have been no orders served on Defendant in the State Court Action.

Jurisdiction

5. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. § 1441(b) in that it is a civil action between citizens of different states and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

Diversity of the Parties and the Amount in Controversy Warrant Removal

¹ Conformed copy to follow due to e-filing backlog at Orange County Superior Court.

1 6. “[T]he purpose of diversity jurisdiction is to avoid the effects of
 2 prejudice against outsiders.” *Industrial Tectonics, Inc. v. Aero Alloy*, 912 F.2d
 3 1090, 1092 (9th Cir. 1990); *see also Spencer v. U.S. Dist. Court for N. Dist. of Ca.*,
 4 393 F.3d 867, 870 (9th Cir. 2004) (the forum defendant rule reflects the belief that
 5 federal diversity jurisdiction would be unnecessary because there is less reason to
 6 fear state court prejudice against the defendant if he is from the forum state). That
 7 purpose would be served by having this matter decided in federal court.

8 7. Specifically, plaintiff was, at the time of the filing of this action, and
 9 still is, a citizen of the State of California (plaintiff is a citizen of the United States
 10 and is domiciled in California). [See Exhibit 1, ¶ 2.] As set forth in the Complaint
 11 and confirmed by the concurrently filed Declaration of Miguel Torres (“Torres
 12 Declaration”), Defendant was at the time of the filing of this action, and still is, a
 13 corporation incorporated under the laws of the State of Delaware, having its
 14 principal place of business in the in the State of Ohio. [Exhibit 1, ¶ 3; Torres
 15 Declaration, ¶ 2.] Consequently, Defendant is a citizen of the states of Delaware
 16 and Ohio. *See 28 U.S.C. §1332(c)* (“a corporation shall be deemed to be a citizen of
 17 every State and foreign state by which it has been incorporated and of the State or
 18 foreign state where it has its principal place of business”).

19 8. Plaintiff’s complaint identifies no other named defendants and
 20 specifically states “Miguel Chavarria . . . is an individual and not a named
 21 Defendant.” [Exhibit 1, ¶ 14.] Further, Doe defendants “shall be disregarded” for
 22 removal purposes. *See 28 U.S.C.S. §1441(a)*.

23 9. Accordingly, since plaintiff is a citizen of California and Defendant is
 24 a citizen of Delaware and Ohio, complete diversity of citizenship exists in this
 25 matter pursuant to 28 U.S.C. § 1332.

26 10. Removal is proper if the amount in controversy exceeds the sum or
 27 value of \$75,000 exclusive of interest and costs. 28 U.S.C. § 1332(a). Where a
 28 complaint does not demand a dollar amount, the removing party must prove by a

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1 preponderance of the evidence that the amount in controversy exceeds \$75,000.
 2 *Singer v. State Farm Mut. Auto Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997); *Cohn v.*
 3 *Petsmart*, 281 F.3d 837, 839 (9th Cir. 2002). A removing defendant need not prove
 4 to a legal certainty that the amount in controversy requirement has been met; rather,
 5 “the defendant must provide evidence establishing that it is ‘more likely than not’
 6 that the amount in controversy exceeds that amount.” *Sanchez v. Monumental Life*
 7 *Insurance Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

8 11. The Complaint here does not demand a specific dollar amount.
 9 [Exhibit 1.]

10 12. Although Defendant contends that it is not liable to Plaintiff in any
 11 way, a review of the Complaint and plaintiff’s previous pre-litigation settlement
 12 demand establish that plaintiff seeks to recover in excess of \$75,000, exclusive of
 13 interest and costs, as required for diversity jurisdiction under 28 U.S.C. § 1332.

14 13. The State Court Action is an action for damages arising from
 15 plaintiff’s employment with Defendant. Plaintiff alleges six causes of action: (1)
 16 harassment in violation of the Fair Employment and Housing Act, (2) failure to
 17 maintain a work environment free from harassment, (3) unlawful retaliation, (4)
 18 wrongful termination – constructive discharge, (5) intentional infliction of
 19 emotional distress, and (6) negligent infliction of emotional distress. [Exhibit 1.]

20 14. According to the allegations of the Complaint, as a result of
 21 Defendant’s conduct, “PLAINTIFF suffered injuries including, but not limited to,
 22 physical and mental pain and suffering, physical injuries, past and future costs of
 23 medical care and treatment, and past and future loss of earnings and earning
 24 capacity, in an amount not yet ascertained, but which exceeds the minimum
 25 jurisdictional limits of this Court.” [Exhibit 1, ¶ 62.] Plaintiff further alleges as a
 26 result of Defendant’s conduct, she “has suffered and continues to suffer special
 27 damage, including loss of front pay and benefits and back pay and benefits as shall
 28 be proved at trial.” [Exhibit 1, ¶ 68.] Plaintiff also alleges as a result of Defendant’s

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1 conduct, she suffered “extreme emotional distress” and “has suffered injury to her
 2 mental and emotional well-being including fear, anxiety, depression, pain
 3 humiliation, anger, despair, embarrassment, and uncertainty . . .” [Exhibit 1, ¶¶ 74,
 4 83.]

5 15. Plaintiff is also seeking punitive damages on three of her causes of
 6 action. [Exhibit 1, ¶¶ 63, 67, 85.] Punitive damages awards must be considered in
 7 calculating the amount in controversy for jurisdictional purposes. *Yates v. Nimeh*,
 8 486 F. Supp. 2d 1084, 1089 (N.D. Cal. 2007) (“In calculating the amount in
 9 controversy, the Court must also consider punitive damages that plaintiff can
 10 recover as a matter of law.”).

11 16. In addition, plaintiff also seeks recovery of attorneys’ fees under
 12 California Government Code section 12965(b). [Exhibit 1, ¶ 73; Prayer for Relief.]
 13 Both mandatory and discretionary attorneys’ fee awards can be considered by the
 14 Court in determining the jurisdictional amount. *Galt G/S v. JSS Scandinavia*, 142
 15 F.3d 1150, 1156 (9th Cir. 1998) (“[W]here an underlying statute authorizes an
 16 award of attorneys’ fees, either with mandatory or discretionary language, such fees
 17 may be included in the amount in controversy.”).

18 17. As shown above, plaintiff’s claims for lost earnings and benefits,
 19 emotional distress damages, punitive damages, and attorneys’ fees place the amount
 20 in controversy well in excess of \$75,000. *See White v. FCI USA, Inc.*, 319 F.3d 672
 21 (5th Cir. 2003) (it was facially apparent that plaintiff’s wrongful termination claim
 22 exceeded \$75,000 based on her “lengthy list of compensatory and punitive
 23 damages” combined with attorney’s fees).

24 18. Further, on April 27, 2018, in plaintiff’s initial demand letter to
 25 Defendant, plaintiff’s counsel demanded \$1,000,000 to settle the case based on the
 26 alleged damages suffered by plaintiff as a result of the same conduct alleged in
 27 plaintiff’s complaint. [Declaration of Erin D. Leach, ¶ 2, Ex. 5.] “A settlement letter
 28 is relevant evidence of the amount in controversy if it appears to reflect a

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reasonable estimate of the plaintiff's claim." *Cohn v. PetSmart, Inc.* 281 F.3d 837, 840 (9th Cir. 2002).

19. Although Defendant denies plaintiff's allegations and believes they are without merit, it is clear, if these allegations are taken as true, the amount in controversy exceeds \$75,000, exclusive of costs and interest.

Timeliness of the Removal

20. This notice of removal is timely filed pursuant to 28 U.S.C. § 1446 (b) in that it is filed within a year of the filing of the Complaint and within 30 days after receipt by Defendant of a paper from which it may first be ascertained that the case is one which is or has become removable, namely the Complaint.

Written Notice

21. Pursuant to 28 U.S.C. §1446(d), written notice of the filing of this Notice of Removal will be promptly provided to all parties and/or counsel. A copy of the Notice of Removal will be promptly filed with the Clerk of the Superior Court of California, Orange County.

Dated: February 22, 2019

SNELL & WILMER L.L.P.

By: /s/ *Erin D. Leach*

Brian Mills

Erin D. Leach

Amina Mousa

Attorneys for Defendant Sterling
Jewelers Inc.

Shervin Shakoury vs. Sterling Jewelers Inc.
USDC, Central District, Case No. 2:19-cv-1341

CERTIFICATE OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California, 92626.

On February 22, 2019, I served, in the manner indicated below, the foregoing document described as **NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. SECTION 1441(B) (DIVERSITY)** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

Joshua Bordin-Wosk, Esq.
Lindsay Burton, Esq.
B/B Law Group LLP
6100 Center Drive, Suite
1100
Los Angeles, CA 90045

Attorneys for Plaintiff

Tel: 323-925-7800
Fax: 323-925-7801
Email:
JBordinWosk@BBLawGroupLLP.com
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- BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Costa Mesa, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service each day and that practice was followed in the ordinary course of business for the service herein attested to (F.R.C.P. § 5 (b)(2)(C)).
 - BY E-FILING (USDC Central): I caused such document to be sent electronically to the court; pursuant to General Order No. 08-02, electronic filing constitutes service upon the parties who have consented to electronic service.
 - FEDERAL: I declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made.

Executed on February 22, 2019, at Costa Mesa, California.

Aatoria Martin

Antonia Martin